

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEVIN CAHILL,)	
)	
Petitioner,)	
)	
v.)	No. 4:11CV938 HEA
)	
ST. LOUIS COUNTY CIRCUIT)	
COURT, et al.,)	
)	
Respondents.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The petition will be summarily dismissed.

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts provides that a district court shall summarily dismiss a § 2254 petition if it plainly appears that the petitioner is not entitled to relief. Rule 4 applies to petitions brought under § 2241. See Rule 1(b) of the Rules Governing § 2254 Cases.

Petitioner is currently being prosecuted in this Court on several counts of drug and firearm charges. United States v. Cahill, 4:09CR497 HEA. The criminal case has been set for trial on August 15, 2011. During the pendency of the criminal case, petitioner was convicted of second degree burglary and stealing in the state courts. State v. Cahill, 09SL-CR08271-01 (St. Louis Circuit Court).

In his first ground for relief, petitioner complains that he is not being given credit for time served in his federal criminal action. This ground is premature because petitioner has not been sentenced in the criminal case. As a result, petitioner is not entitled to relief on this ground of the petition.

In his second ground for relief, petitioner alleges that the federal prosecutor delayed bringing his criminal case before this Court so that his state conviction for second degree burglary and stealing could be used to enhance his federal sentence under the Armed Career Criminal Act. This ground is not cognizable in these proceedings. The prosecutor has complete discretion to decide when to file an indictment against a defendant. As a result, the petition will be denied.

Accordingly,

IT IS HEREBY ORDERED that petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 is **DISMISSED**.

IT IS FURTHER ORDERED that petitioner's motion for leave to proceed in forma pauperis is **GRANTED**.

An Order of Dismissal will accompany this Order.

Dated this 13th day of July, 2011.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE